

REMARKS

With entry of this amendment, claims 1, 19 and 32 have been amended and claim 13 canceled. Support for the claim amendments is found in claim 13 as originally filed as well as in the specification at page 6, lines 2-3. As such, it is submitted that no new matter has been added to the application by way of this amendment.

Claims 1-6, 8 and 11 stand rejected under 35 U.S.C. §103(a) over McCarthy (U.S. Patent 6,768,420). Claim 7 stands rejected under 35 U.S.C. §103(a) over McCarthy in view of Ford (U.S. Patent 6,756,896). Claims 14 and 16 stand rejected under 35 U.S.C. §103(a) as being obvious over McCarthy in view of Wilkinson (U.S. Patent 5,892,447). Claims 14 and 15 stand rejected under 35 U.S.C. §103(a) over McCarthy in view of Brinkmeyer (U.S. Patent 5,940,007). Claim 17 stands rejected under 35 U.S.C. §103(a) as being obvious over McCarthy in view of Barnas (U.S. Patent 6,642,838). Claim 18 stands rejected under 35 U.S.C. §103(a) as being obvious over McCarthy in view of Wilkinson and further in view of Barnas. Claims 19-25 and 28 stand rejected under 35 U.S.C. §103(a) over McCarthy in view of Monroe (U.S. Patent 4,882,564). Claims 26, 27 and 29-31 stand rejected under 35 U.S.C. §103(a) as being obvious over McCarthy in view of Monroe and further in view of Barnas. Claims 32, 33, 35 and 36 stand rejected under 35 U.S.C. §103(a) as being obvious over McCarthy in view of Monroe and further in view of Ford. Lastly, claim 34 stands rejected under 35 U.S.C. §103(a) as being obvious over McCarthy in view of Monroe and further in view of Ford and further in view of Barnas.

All of the outstanding claim rejections rely on McCarthy either alone (with respect to pending claims 1-6, 8 and 11) or as a primary reference of a combination (remainder of pending claims) to reject the outstanding claims as being obvious.

By way of this amendment, independent claims 1, 19 and 32 have been amended to narrow the identity of the mammalian body motion detector to those operating on the basis of an infrared sensor or a carbon dioxide sensor.

With this amendment, Applicant submits that McCarthy is inapplicable as a reference in establishing a *prima facie* obviousness rejection on the basis that McCarthy specifically teaches away from an infrared mammalian body motion detector at column 1, lines 43-45, where it states “Many such prior occupant detection systems [inclusive of active and passive infrared] detect a movement, however, and such systems may fail to detect the presence of, for instance, a sleeping or moribund child.” In response to McCarthy’s perception as to the failings of infrared sensors to detect mammalian body motion, McCarthy proceeds to detail an electric field based sensor.

As a result of McCarthy teaching away from the claimed invention of independent claims 1, 19 and 32 are now submitted to be improper and it is respectfully requested that they be withdrawn on the basis that a reference teaching away from a claimed invention would discourage one of ordinary skill in the art at the time the claimed invention was made from considering such an invention and thereby render the claim nonobvious. (For case law regarding a reference teaching away from a claimed invention being an improper basis for an obviousness rejection see *Kloster Speedsteel AB v. Crucible Inc.*, 230 USPQ 81 (Fed. Cir. 1986), on rehearing 231 USPQ 160 (Fed. Cir. 1986); or *Gillette Co. v. S.C. Johnson & Son, Inc.* 16 USPQ2d 1923 (Fed. Cir. 1990)).

With removal of McCarthy as a reference as a basis for an obvious rejection, independent claims 1, 19 and 32, and all the claims that depend therefrom, are now submitted to be in allowable form. Additionally, Applicant reiterates the remarks already made of record with respect to the inclusion of a “fisheye or other wide angle lens.” In Paper No. 20061109, page 20,

first and second paragraphs, the Examiner relies on Tino (U.S. Patent 5,978,017) as an exemplary disclosure of a "fisheye or wide angle lens in a similar environment" in support of the proposition that failure to provide patentable weight to this claim recitation is proper in only taking into account knowledge that was within the level of ordinary skill at the time the claimed invention was made and not inclusive of knowledge gleaned only from Applicant's disclosure.

In response, Applicant submits that McCarthy is both explicit and apparently exhaustive as to the types of image capture devices that are usable with the system of McCarthy (column 16, lines 13-29) reciting image capture devices that "can be used in combination with the EF detector system described herein." As the image capture devices contemplated as combinable within the teachings of McCarthy (column 16, lines 14-16) are not inclusive of Tino, Applicant respectfully submits that McCarthy again teaches away from a combination with Tino. As the specific image capture devices contemplated by McCarthy are not inclusive of a fisheye or wide angle lens, Applicant again reiterates that this claim language is also entitled to patentable weight. The exception to the references disclosed in McCarthy (at column 16, lines 14-16) being silent as to wide angle or fisheye lenses is US. Patent 5,760,935 which in fact teaches away from wide angle lenses as causing unacceptable image distortion (see Background of Invention).

Thus, notwithstanding the inclusion of Monroe as a new reference, reconsideration and withdrawal as to the rejection of independent claims 1, 19 and 32 and all claims dependent therefrom is respectfully requested. With respect to separate bases of patentability for claims dependent from any of independent claims 1, 19 or 32, Applicant hereby incorporates by reference the remarks already made of record with respect to dependent claims 2-8, 11, 14-18, 20-28 and 33-36.

With respect to independent claim 29, as well as claims 30 and 31 which depend therefrom, these claims have been canceled in an effort to advance prosecution of the remaining claims. Applicant reserves the right to advance prosecution of claims 29-31 at a later time.

Summary

With entry of this amendment claims 1-8, 11, 14-28 and 32-36 remain pending in the application. Reconsideration and withdrawal of the outstanding rejections is hereby requested on the basis of McCarthy teaching away from the pending claims. Entry of this amendment and the passing of this application to issuance are solicited.

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